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**JUL 10 2006**

**OFFICE OF PETITIONS**

In re Application of	:	
Boakes et al.	:	DECISION DISMISSING PETITION
Application No. 10/022,332	:	UNDER 37 CFR 1.181
Filed: December 20, 2001	:	
Attorney Docket No. 367-40946X00	:	

This is a decision on the petition under 37 CFR 1.181, filed May 10, 2005, and resubmitted on April 18, 2006, to withdraw the holding of abandonment.

On September 13, 2004, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period for reply. In the apparent absence of a timely filed response, the application became abandoned on December 14, 2004. On April 18, 2005, the Office mailed a Notice of Abandonment.

In the present petition, the practitioner requested that the Office withdraw the holding of abandonment on the basis that the nonfinal Office action was not received. Specifically, the practitioner asserted that he inspected the file of the above-identified application maintained in the law office and did find any communication concerning the receipt of the nonfinal Office action. Additionally, applicant stated:

Assuming that an Office Action in fact did issue, submitted herewith is a printout from the docketing records of our firm showing that there was no matter involving the above-referenced application **on March 13, 2005** requiring a response. Furthermore, the manual pages out of this firm's **Sunday, March 13, 2005 and Monday, March 14, 2005 docketing records** are also submitted herewith which do not contain an entry that any response to an Office Action was due.

*Petition of May 10, 2005 (emphasis added).*

**PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT**

First, the Office notes that the practitioner attached and referenced the docketing records for an incorrect time period (i.e., March 13-14, 2005). The nonfinal Office action was mailed on September

13, 2004, which required a response by December 14, 2004, absent extensions of time. Additionally, practitioner submitted a "Case Detail" for an incorrect Application, No. 10/022,220, instead of Application No. 10/022,332.

Second, a review of the record indicates no irregularity in the mailing of the nonfinal Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record, as it existed on September 13, 2004. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See MPEP 711.03(c). For example, if a three-month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (*e.g.* if the practitioner has a history of not receiving Office actions).

Accordingly, petitioner must submit a copy of the docket record for the correct application and for the relevant period, showing all replies docketed for a date three months from the mail date of the non-received nonfinal Office action as documentary proof of non-receipt of the nonfinal Office action. As petitioner has not presented the required showing, the petition to withdraw the holding of abandonment is dismissed.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment." Extensions of time are permitted under 37 CFR 1.136(a).

## **ALTERNATIVE VENUE**

Petitioner may wish to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof,

the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) The petition fee as set forth in 37 CFR 1.17(m), **an additional \$1,500.00** for a large entity and \$750.00 for a small entity;

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell:**

By mail:                      Mail Stop Petition  
                                    Commissioner for Patents  
                                    P.O. Box 1450  
                                    Alexandria, VA 22313-1450

By FAX:                      (571) 273-8300  
                                    Attn: Office of Petitions

By hand:                     Customer Service Window  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.



Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions